

REMARKS

Claims 1-13 are all the claims pending in the application. Claims 1-3 and 9-13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Leo (U.S. patent No. 5,419,283) in view of Denesuk (U.S. Patent No. 6,178,922) and Day, et al. (U.S. Patent Publication No. 6,926,916). For the following reasons, Applicant respectfully traverses this rejection.

As an initial matter, Applicant thanks the Examiner for the courtesies extended in the telephone interview conducted on December 19, 2006. By way of this Amendment, Applicant has amended claim 1 to recite that the polymeric composition also includes a plasticizer in a quantity of between 10% and 40% by weight, the plasticizer being selected from the group consisting of sucrose, maltose, fructose, and mixtures thereof. Since this limitation was taken from claim 12, it is requested that it be entered despite the finality of the Office Action. As discussed below, it is respectfully submitted that a person of ordinary skill in the art would not have found it obvious to use these sugars as the plasticizer while at the same time including the sugar substitute isomalt. More specifically, if the goal is to provide a low calorie chew toy (which is the Examiner's rationale for adding isomalt to the Leo chew), then a person of skill in the art would not include any sugar as the plasticizer. Accordingly, it is submitted that the claims patentably distinguish over the prior art.

In more detail:

I) The examiner affirms on page 3 that "Day teaches that it is notoriously well-known that isomalt is known sweetening agent and a substitute for sugar" and that "it would have been obvious to one of ordinary skill in the art to further modify the teachings of Leo at the time of the

invention since the modification is merely an engineering design choice involving the selection of a known alternate sugar ingredient performing the same intended function selected as a known material for intended use to reduce choleric intake”. Furthermore, the Examiner affirms on page 8 that “is general knowledge of one of ordinary skill in the art that isomalt is a sugar substitute. One of ordinary skill would be motivated to modify the teachings of Leo with isomalt for its generally known advantages of being better for the teeth for preventing teeth decay ...”.

However, such assertions of the Examiner are inconsistent with the actual content of the present invention.

According to this latter, isomalt is not used as a substitute for sugar performing the same intended function. The two ingredients may indeed be both present in the composition of the present invention and have different purposes. In more detail, isomalt is one of the main ingredients specified in claim 1 and is used as a sweetener, whereas the sugars sucrose, maltose and fructose are used as plasticizers, as in Leo.

The above quoted assertions of the Examiner are thus evidence of the unobviousness of the present invention. It results indeed therefrom that the skilled in the art would at most - on the basis of the teachings of the prior art - devise to replace the sugar with isomalt, but certainly not to add isomalt to a composition containing also sugar.

During the interview, the Examiner presented the following counter-arguments:

- Specifically, the Examiner noted that in column 2, lines 48 and 49, Leo states that “...any additional substance effective to enhance the attractiveness of the article for the intended animal” could be added. Based on this statement, the Examiner

asserted that it may have been obvious to add either sugar or a sugar sweetener, such as isomalt.

- Further, the Examiner commented that perhaps that the amount of plasticizer sugar in the Leo dog chew is very small so that it would not substantially increase the overall calories of the toy.

Applicants respectfully disagree with the Examiner for the following reasons. With respect to the first counter-argument, Applicant submits that the Examiner has misinterpreted the statement of Leo at col. 2, lines 48-49. “Attractiveness” is indeed the property of capturing at a distance the attention of an external entity -- namely an animal or person -- due, e.g., to the physical aspect, but not to interior qualities which cannot be perceived at distance. Such a meaning is exemplified by the common expressions “attractive woman” and “attractive man”. It goes without saying that the winner of a beauty contest who is evaluated on the basis of the appearance must be an “attractive person”, whereas the same does not apply to the winner of a Nobel prize, who is evaluated on the basis of the mental performances, i.e., interior qualities.

Hence, the “additional substance effective to enhance the attractiveness of the article” mentioned at col. 2, lines 48-49 of Leo is any agent suitable of eliciting at a distance the attention of dogs for the chew -- such as e.g. a pigment or a fragrance -- whereas it is not -- or at least is unobvious that it is -- a substance such as isomalt, which does not change the external appearance or the odor of the dog chew and cannot be sensed at a distance. Such an interpretation is further corroborated by the fact that “flavoring substances” (namely substances suitable -- such as isomalt -- to alter the taste of the dog chew, but not to change the aspect

thereof or to be sensed at distance) are mentioned at col. 2, line 46 of Leo, as distinguished from the substances effective to enhance the attractiveness of the dog chew. It is thus irrefutable that the mentioning of these latter substances cannot at all suggest to the skilled in the art the use of isomalt in a dog chew.

With respect to the second counter-argument, Applicant submits that the amount of sugar plasticizer in the Leo dog chew is actually not small. According to Leo, such amount is 10-40% by weight of the polymeric composition (*See*, col. 1, lines 36-38 and claim 3), namely the same as in the present invention. Thus, it would simply be illogical for a person of ordinary skill in the art to add isomalt as a sweetener, while at the same time including the sugars recited in claim 1.

II) The Examiner notices in the first sentence of page 9 of the Office Action that – as a matter of fact - it may be legitimate to combine a large number of references in order to substantiate a rejection. Nevertheless, the Examiner neglects to consider that such a rejection requires that there are pointers or suggestions in the various references which necessarily induce the skilled in the art to effect the same combination as in the invention. Such presupposition is not at all applicable to the present case: e.g. Leo does not provide any pointer for adding isomalt to the sugar ingredients indicated therein and Day does not provide any pointer for selecting isomalt as sweetener for pet chews.

Hence, the combination of the several prior art references may be effected only with hindsight of the present invention and is thus certainly unsuitable for alleging the obvious-ness thereof.

III) The Examiner acknowledges on page 9, II paragraph of the Office Action that the claimed combination of ingredients provides the result of suppressing salmonella, even if he questions the actual criticality of the specified proportions. Since the prior art does not provide any indication concerning such an effect of the claimed combination (in particular of the combined ingredients isomalt and garlic), it must be acknowledged that the claimed composition produces unexpected results and is thus per se unobvious, even apart from the specified proportions.

For the above reasons, it is submitted that claim 1 patentably distinguishes over the prior art.

IV) The rejection of claim 5 based on the combination of the further prior art reference Slimak with the three references already used for attacking claim 1 is further deprived of any legitimate foundation.

Slimak affirms indeed explicitly (see the first sentence of the Background section) “having food products available from as many different food sources as possible is of the greatest importance to persons with food allergies, and will become of even greater importance as food allergies are diagnosed in increasing numbers of people. As the potential problems of food allergies are more recognized, increasing numbers of people are looking for non-wheat items to include in their diets, to increase variety and aid in the prevention of food allergies”. It is thus irrefutable that Slimak is concerned solely with the selection of foods suitable for preventing allergies in human beings. Conversely, it is unreasonable to conclude that the skilled in the art of

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pet chews may have obviously considered using the ingredients mentioned in Slimak for the incorporation in such chews. Accordingly, the subject-matter of present claim 5 should be certainly allowable.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

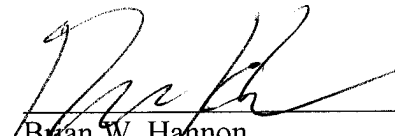
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